



Food and Drug Administration  
Rockville MD 20857

#412

MAR 21 1997

Re: GLYSET  
Docket No. 97E-0077

Stephen G. Kunin  
Deputy Assistant Commissioner for  
Patent Policy and Projects  
Office of the Assistant Commissioner for Patents  
U.S. Patent and Trademark Office  
Crystal Park Building 2, Suite 919  
Washington, D.C. 20231

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PATENT EXTENSION  
A/C PATENTS

Dear Mr. Kunin:

This is in regard to the application for patent term extension for U.S. Patent No. 4,639,436 filed by Bayer Aktiengesellschaft under 35 U.S.C. § 156. The human drug product claimed by the patent is GLYSET (miglitol), which was assigned New Drug Application (NDA) No. 20-682.


A review of the Food and Drug Administration's official records indicates that this product was subject to a regulatory review period before its commercial marketing or use, as required under 35 U.S.C. § 156(a)(4). Our records also indicate that it represents the first permitted commercial marketing or use of the product, as defined under 35 U.S.C. § 156(f)(1), and interpreted by the courts in Glaxo Operations UK Ltd. v. Quigg, 706 F. Supp 1224 (E.D. Va. 1989), aff'd, 894 F. 2d 392 (Fed. Cir. 1990).

The NDA was approved on December 18, 1996, which makes the submission of the patent term extension application on February 11, 1997, timely within the meaning of 35 U.S.C. § 156(d)(1).

Should you conclude that the subject patent is eligible for patent term extension, please advise us accordingly. As required by 35 U.S.C. § 156(d)(2)(A) we will then determine the applicable regulatory review period, publish the determination in the Federal Register, and notify you of our determination.

Please let me know if we can be of further assistance.

Sincerely,

  
Ronald L. Wilson, Director  
Health Assessment Policy Staff  
Office of Health Affairs

cc: Jeffrey M. Greenman, Esq.  
Bayer Corporation  
400 Morgan Lane  
West Haven, CT 06516